

### Subpart 212.2—Special Requirements for the Acquisition of Commercial Items

#### 212.205 Offers.

(c) When using competitive procedures, if only one offer is received, the contracting officer shall follow the procedures at 215.371.

[77 FR 39138, June 29, 2012]

#### 212.207 Contract type.

b) In accordance with section 805 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), use of time-and-materials and labor-hour contracts for the acquisition of commercial items is authorized only for the following:

(i) Services acquired for support of a commercial item, as described in paragraph (5) of the definition of *commercial item* at FAR 2.101 (41 U.S.C. 103).

(ii) Emergency repair services.

(iii) Any other commercial services only to the extent that the head of the agency concerned approves a written determination by the contracting officer that—

(A) The services to be acquired are commercial services as defined in paragraph (6) of the definition of *commercial item* at FAR 2.101 (41 U.S.C. 103);

(B) If the services to be acquired are subject to FAR 15.403–1(c)(3)(ii), the offeror of the services has submitted sufficient information in accordance with that subsection;

(C) Such services are commonly sold to the general public through use of time-and-materials or labor-hour contracts; and

(D) The use of a time-and-materials or labor-hour contract type is in the best interest of the Government.

[74 FR 34264, July 15, 2009, as amended at 74 FR 35826, July 21, 2009; 76 FR 21812, Apr. 19, 2011; 76 FR 58136, Sept. 20, 2011]

#### 212.211 Technical data.

The DoD policy for acquiring technical data for commercial items is at 227.7102.

#### 212.212 Computer software.

(1) Departments and agencies shall identify and evaluate, at all stages of the acquisition process (including con-

cept refinement, concept decision, and technology development), opportunities for the use of commercial computer software and other non-developmental software in accordance with Section 803 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

(2) See Subpart 208.74 when acquiring commercial software or software maintenance. See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation.

[74 FR 34270, July 15, 2009]

#### 212.270 Major weapon systems as commercial items.

The DoD policy for acquiring major weapon systems as commercial items is in Subpart 234.70.

[71 FR 58538, Oct. 4, 2006]

#### 212.271 Limitation on acquisition of right-hand drive passenger sedans.

10 U.S.C. 2253(a)(2) limits the authority to purchase right-hand drive passenger sedans to a cost of not more than \$40,000 per vehicle.

[77 FR 19128, Mar. 30, 2012]

### Subpart 212.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

#### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at <https://www.acquisition.gov>, the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) Use the FAR clause at 52.203–3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.